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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 156

~~TITLE 172 - NEBRASKA DEPARTMENT OF HEALTH PROFESSIONAL AND OCCUPATIONAL
LICENSES REGULATIONS
CHAPTER 156 - REGULATIONS DEFINING UNPROFESSIONAL CONDUCT BY A PSYCHOLOGIST~~

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE
CHAPTER 156 UNPROFESSIONAL CONDUCT RELATING TO THE PRACTICE OF
PSYCHOLOGY

What about telehealth and LB 400? Statute 71-8501-8508? (see last page for statute language)

Consider section on 'what is unprofessional conduct?'

001. SCOPE OF REGULATIONS. These regulations are intended to define and set forth what constitutes govern unprofessional conduct pursuant relating to the Uniform Licensure Law and practice of psychology under Nebraska Revised Statute (Neb. Rev. Stat.) § 71-1,226-38-179 of the Uniform Credentialing Act and Neb. Rev. Stat. § 38-3105 of the Psychology Practice Act.

~~002-DEFINITIONS.~~

~~002.01 Client means any person with whom the Psychologist has an agreement to provide psychological services.~~

~~002.02 Clinical Psychology means that branch of psychology concerned with the assessment, diagnosis, and treatment of mental, emotional and behavioral disorders.~~

~~002.03 Psychological services shall be the provision of services in the practice of psychology.~~

~~002.04 Unprofessional conduct is conduct which fails to conform to the accepted standards for the psychology profession and which could jeopardize the health safety and welfare of the client and shall include but not be limited to the conduct described in these regulations and Neb. Rev. Stat. 71-148.~~

~~003-002.~~ INFORMED CONSENT. A psychologist ~~shall~~ must obtain from a client or his or her legal representative informed and voluntary consent before providing or assisting in the care for treatment of the client. Failure to do so ~~shall~~ will constitute unprofessional conduct. A client ~~shall be~~ is deemed to have not given his or her informed and voluntary consent if the psychologist:

(A) 003.01 Fails to advise a client of a conflict of interest. A conflict of interest exists if the exercise of the psychologist's professional judgment on behalf of the client will be or reasonably will be impaired or adversely affected by his or her own financial, business, property or personal interest.

(B) 003.02 Fails to clarify the nature of the relationship to all parties directly affected by the services.

(C) 003.03 Fails to advise a client of a known bias or prejudice which seriously affects the psychologist's objectivity in dealing with the client.

004.003. COMPETENCE. A psychologist ~~shall~~ must not provide services or use techniques for which he or she is not trained or experienced. Unprofessional conduct ~~in the practice of practice of psychology shall include~~ includes, but is not limited to:

- (A) ~~004.01~~ Failure to consider a client as an individual and imposing on the client any stereotypes of behavior, values or roles related to age, gender, gender identity, race, ethnicity, culture, national origin, religion, disability, nationality, or sexual orientation, disability, socioeconomic status, or any basis proscribed by law which would unreasonably interfere with the objectivity provision of psychological services to the client.
- (B) ~~004.02~~ Making decisions involving clients based on test results for which the psychologist has made an interpretation in an area or areas where he or she is not trained or experienced.
- (C) ~~004.03~~ Making decisions involving clients based on interpretations of test results by others whom the psychologist knows are not adequately trained or experienced.
- (D) ~~004.04~~ Providing psychological services in which his or her serious personal problems may cause a competent psychologist to believe it will lead to inadequate performance or harm to a client, colleague, student, or research participant.
- (E) ~~004.05~~ Willful or gross neglect of a client of record.
- (F) ~~004.06~~ Terminating a relationship ~~which with~~ a client without informing the client of such termination and providing the client with information regarding adequate alternatives for treatment.
- (G) ~~004.07~~ Failing to take appropriate care when working with minors or other persons who are unable to give voluntary, informed consent, to protect their best interests.

~~004. DISCRIMINATION. Psychologists must provide professional assistance to clients or patients without discrimination on the basis of race, color, religion, sex, disability, marital status, national origin, age, familial status, and ancestry.~~

005. PUBLIC STATEMENTS. A psychologist ~~shall~~ must be accurate and objective when advertising regarding professional services or products. Unprofessional conduct includes but is not limited to:

- (A) ~~005.01~~ Advertising of psychological products or services which contain:
 - (i) ~~A)~~ A false, fraudulent, misleading, deceptive statement;
 - (ii) ~~B)~~ A testimonial from a patient which attests to performance of superior performance of professional service of psychologist's services;
 - (iii) ~~C)~~ A statement guaranteeing any professional services;
 - (iv) ~~D)~~ A statement intended or likely to appeal to a client's fears, anxieties, or emotions concerning the possible results of failure to obtain the offered services;
 - (v) ~~E)~~ A statement concerning the comparative desirability of offered services;
 - (vi) ~~F)~~ A statement of direct solicitation of individual clients.
- (B) ~~005.02~~ Giving anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.
- (C) ~~005.03~~ Advertising for "personal growth groups", clinics, and agencies without a clear statement of purpose and a clear description of the services to be provided.
- (D) ~~005.04~~ Advertising for psychological devices, books or other products offered for commercial sale without making reasonable efforts to ensure presentation of nondeceptive, accurate, or nonmisleading statements.

- (E) ~~005-05~~ Knowingly permitting others to misrepresent the psychologist's professional qualifications or the psychologist's affiliation with products or services for personal gain of the psychologist.
- (F) ~~005-06~~ Providing individual formal diagnostic or formal therapeutic services outside the context of the psychologist/client relationship.
- (G) ~~005-07~~ Making deceptive or misleading representations of the psychologist's education, training, or experience.

006. CONFIDENTIALITY. A psychologist ~~shall~~must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others or where otherwise required by law and in accordance with Neb. Rev. Stat. § 38-3131. Failure to do so ~~shall~~will constitute unprofessional conduct.

007. PROFESSIONAL RECORDS. The following apply to professional records:

- (A) Retain full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is a greater period of time later; and
- (B) Employ a policy for transferring records in the event of a location change, death, disaster, or other unforeseen change in a way that maintains confidentiality and safeguards the welfare of the clients.

008. ~~007~~ PROFESSIONAL RELATIONSHIPS. A psychologist ~~shall~~must safeguard the welfare of clients and maintain appropriate professional relationships with clients and research participants. Unprofessional conduct includes but is not limited to:

- (A) ~~007-01~~ Using skills of the psychologist to exploit clients.
- (B) ~~007-02~~ Failure to terminate a clinical or consulting relationship with a client when the client is clearly and convincingly not benefiting from it.
- (C) ~~007-03~~ Intentional failure to report to the Department ~~Board of Examiners of Psychologists~~ known unprofessional conduct by a psychologist. Information that becomes known to a psychologist in the course of psychotherapy and is otherwise subject to the protection of confidentiality is exempt from this provision.
- (D) ~~007-04~~ Abandoning or neglecting a client with whom a professional relationship exists.

009. ~~008~~ SEXUAL MISCONDUCT. A psychologist ~~shall in no circumstances~~must not engage in sexual acts with clients, with students who are under direct evaluative control of the psychologist, or with individuals who are currently participating in research conducted by or under the direction of the psychologist. Specifically with regard to the clients, such unprofessional conduct includes but is not limited to:

- (A) ~~008-01~~ Engaging in sexual relationships with a client, regardless of the clients consent.
- (B) ~~008-02~~ Soliciting a sexual relationship with a client.
- (C) ~~008-03~~ Committing an act with a client punishable as a sexual or sexual related crime.
- (D) ~~008-04~~ Engaging in any sexual act with a client or with a person who has been a client. Nothing in these regulations ~~shall be construed to~~ allow for a pre-arranged waiting period.
- (E) ~~008-05~~ Engaging in sexual harassment of a client. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unnecessary in the professional relationship with a client.

010. ~~009~~ FEES FOR SERVICES. A psychologist ~~shall~~ must solicit or obtain fees for professional service in an appropriate manner consistent with the laws of the State of Nebraska. Unprofessional conduct includes but is not limited to:

- (A) ~~009.01~~ Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the psychologist.
- (B) ~~009.02~~ Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.
- (C) ~~009.03~~ Division of fees, or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient.
- (D) ~~009.04~~ Ordering or utilizing tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
- (E) ~~009.05~~ Falsely or fraudulently claiming to have performed a professional service, charging for a service, or representing a service as the psychologist's own when he or she has not rendered due service or substantially assumed responsibility for the service.

011. ~~010~~ ASSESSMENT AND TREATMENT TECHNIQUES. A psychologist ~~shall~~ must make reasonable efforts to preclude misuse in the development, publication and utilization of psychological assessment techniques for use with clients. Unprofessional conduct includes but is not limited to:

- (A) ~~010.01~~ Failure, in reporting assessment results, to indicate any serious concerns or special circumstances that exist regarding validity or reliability because of the circumstances of the assessment or the inappropriateness of the norms for the person tested.
- (B) ~~010.02~~ Failure to make reasonable efforts to avoid and prevent the misuse of obsolete psychological tests and instruments.
- (C) ~~010.03~~ Offering scoring and interpretation services for which the validity of the programs and procedures used in arriving at interpretations cannot be supported by adequate evidence.
- (D) ~~010.04~~ Encouraging or promoting the use of psychological assessment techniques by inadequately trained or otherwise unqualified persons through teaching, sponsorship, or supervision.
- (E) ~~010.05~~ In presenting psychological information, failure to make reasonable efforts to present such information objectively, fully, and accurately.

012. REFERRALS. If, for any reason, a psychologist is unable to provide therapeutic services to a client or patient, the psychologist must refer the client or patient to other credential holders. This may be done by directing the client or patient to specific credential holders or to a list or directory of credential holders who may be able to provide professional assistance. The referral must be documented in the client or patient's record. Failure to comply with this standard is unprofessional conduct.

013. ~~011~~ RESEARCH WITH HUMAN PARTICIPANTS. A psychologist ~~shall~~ must respect the dignity and welfare of human research participants, and ~~shall~~ must comply with these regulations governing such psychological research. Unprofessional conduct includes but is not limited to:

- (A) ~~011.01~~ Except in minimal risk research unless care and treatment is provided in such research, failure to establish an agreement with research participants, prior to their participation, that clarifies the obligations and responsibilities of the psychologist and of the participant. Except where the nature of the research precludes full disclosure, the failure to inform participants of all aspects of the research that might reasonably be expected to

influence willingness to participate, or the failure to explain all aspects of the research about which a participant inquires, also constitute unprofessional conduct; where the nature of the research precludes full prior disclosure, or where the research is with children or with participants who have impairments, the failure to ~~take~~ take additional safeguards to protect the welfare and dignity of the research participants constitutes unprofessional conduct,

- (B) ~~041.02~~ Where methodological requirements of a study make the use of concealment or deception necessary, unprofessional conduct includes failure of the investigator to:
- (i) ~~A)~~ Determine before conducting the study whether the use of the techniques is justified by the study's prospective scientific, educational or applied value;
 - (ii) ~~B)~~ Determine before conducting the study whether alternative procedures are available that do not use concealment or deception; or
 - (iii) ~~C)~~ Provide the participants with an explanation as soon as possible.
- (C) ~~041.03~~ Failure to grant a participant the right to decline to participate in or to withdraw from the research at any time.
- (D) ~~041.04~~ Failure to protect and or inform the participant of undue physical and mental discomfort, harm, and danger that may arise from research procedures; failure to inform participants of risks of such consequences; use of research procedures likely to cause serious or lasting harm to a participant unless the research has a potential benefit and fully informed and voluntary consent is obtained from the participant.
- (E) ~~041.05~~ Except where scientific or humane values justify delaying or withholding information, the failure to provide participants, after data is collected, with information about the nature of the study or the failure to make reasonable efforts to remove any misconceptions that may have arisen constitute unprofessional conduct. Where scientific or humane values justify delaying or withholding this information, unprofessional conduct includes failure by the ~~investigator~~ psychologist to monitor the research and to ensure that there are no undue damaging consequences for participants.
- (F) ~~041.06~~ Failure to make reasonable efforts to detect and remove or correct undesirable consequences for the individual participants, including long term effects.
- (G) ~~041.07~~ Failure to make reasonable efforts to minimize the possibility that his or her research findings will be misleading.
- (H) ~~041.08~~ Failure to make reasonable efforts to prevent distortion, misuse, or suppression of psychological findings by an institution or agency of which he or she is an employee.
- (I) ~~041.09~~ Solicitation of research participants, when clinical services or other professional services are offered as an inducement for participation, without making clear the nature of the services as well as the costs and other obligations to be accepted by participants.

015. ADOPTION OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION'S ETHICAL PRINCIPLES AND CODE OF CONDUCT. The Board adopts the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (APA), effective January 1, 2017, as the Code of Conduct under Neb. Rev. Stat. § 38-3105.

016. COPIES. Copies of the Ethical Principles of Psychologists and Code of Conduct are available from the Department or from the American Psychological Association (APA).

~~These Rules and Regulations recodify 172 NAC 36.6, Regulations Defining Unprofessional Conduct by a Psychologist. Approved by Attorney General: August 24, 1992 Approved by the Governor: October 30, 1992 Filed by the Secretary of State: November 2, 1992~~
EFFECTIVE DATE: NOVEMBER 7, 1992

71-8501 to 71-8508:

71-8501. Act, how cited.

Sections 71-8501 to 71-8508 shall be known and may be cited as the Nebraska Telehealth Act.

Source:Laws 1999, LB 559, § 1.

71-8502. Legislative findings.

The Legislature finds that:

(1) Access to health care facilities and health care practitioners is critically important to the citizens of Nebraska;

(2) Access to a continuum of health care services is restricted in some medically underserved areas of Nebraska, and many health care practitioners in such areas are isolated from mentors, colleagues, and information resources necessary to support them personally and professionally;

(3) The use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska; and

(4) The full potential of delivering health care services through telehealth cannot be realized without the assurance of payment for such services and the resolution of existing legal and policy barriers to such payment.

Source:Laws 1999, LB 559, § 2.

71-8503. Terms, defined.

For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and telemonitoring;

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth; and

(5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage.

Source:Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1.

71-8504. Act; how construed.

The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.

Source:Laws 1999, LB 559, § 4.

71-8505. Written statement; requirements.

(1) Prior to an initial telehealth consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through telehealth shall ensure that the following written information is provided to the patient:

(a) A statement that the patient retains the option to refuse the telehealth consultation at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) A statement that all existing confidentiality protections shall apply to the telehealth consultation;

(c) A statement that the patient shall have access to all medical information resulting from the telehealth consultation as provided by law for patient access to his or her medical records; and

(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.

(2) The patient shall sign a written statement prior to an initial telehealth consultation, indicating that the patient understands the written information provided pursuant to subsection (1) of this section and that this information has been discussed with the health care practitioner or his or her designee. Such signed statement shall become a part of the patient's medical record.

(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the written statement required by subsection (2) of this section, such statement shall be signed by the patient's legally authorized representative.

(4) This section shall not apply in an emergency situation in which the patient is unable to sign the written statement required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

Source:Laws 1999, LB 559, § 5.

71-8506. Medical assistance program; reimbursement; requirements.

(1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation, and the rate shall not depend on the distance between the health care practitioner and the patient.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an Internet service provider, between the patient and the physician or health care practitioner at the distant site which comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

Source:Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82; Laws 2013, LB556, § 6; Laws 2014, LB1076, § 2.

Cross References

- **Medical Assistance Act**, see section 68-901.

71-8507. Health care facility; duties.

A health care facility licensed under the Health Care Facility Licensure Act that receives reimbursement under the Nebraska Telehealth Act for telehealth consultations shall establish quality of care protocols and patient confidentiality guidelines to ensure that such consultations meet the requirements of the act and acceptable patient care standards.

Source:Laws 1999, LB 559, § 7; Laws 2000, LB 819, § 147.

Cross References

- **Health Care Facility Licensure Act**, see section 71-401.

71-8508. Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish necessary methods and procedures.

Source:Laws 1999, LB 559, § 8; Laws 2014, LB1076, § 3.